

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Media Bureau Seeks Comment for Report	)	MB Docket No. 10-238
Required by the Satellite Television	)	
Extension and Localism Act on In-State	)	
Broadcast Programming	)	
	)	
To: The Commission		

**REPLY COMMENTS OF THE  
WASHINGTON STATE ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION**

The Washington State Association of Broadcasters (hereinafter the “Association”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules,<sup>1</sup> hereby submits its Reply Comments in response to the Commission’s Public Notice,<sup>2</sup> by which the Commission has sought comments in advance of the report to Congress required by the Satellite Television Extension and Localism Act of 2010 (“STELA”).<sup>3</sup>

The Association appreciates the opportunity to present the views of its members in response to the Commission’s call for comments regarding in-state broadcast television programming, and believes that its members have a unique perspective on the issues under review by the Commission. The Association is a not-for-profit association, organized under the laws of the State of Washington, for the purposes of the advancement of the broadcasting industry in the state of Washington; to protect and promote generally the interests of the broadcasting industry; and, to foster a legal and regulatory environment conducive to the welfare and benefit to the

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<sup>1</sup> 47 C.F.R. §§ 1.415, 1.419.

<sup>2</sup> “*Media Bureau Seeks Comment for Report Required by The Satellite Television Extension and Localism Act on In-State Broadcast Programming*,” Public Notice, DA 10-2227, rel. Nov. 23, 2010 (hereinafter “Public Notice”).

<sup>3</sup> The Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, 124 Stat. 1218 (2010).

broadcasting industry and its mandate to broadcast in the public interest, convenience and necessity. The Association has a direct interest in this matter because its collective membership includes approximately 25 local television stations licensed by the Commission to serve the needs of local communities within the state of Washington.

By its recent Public Notice, the Commission sought input consistent with Section 304 of STELA, which requires that the Commission submit a report to Congress within eighteen months from the enactment of STELA providing analysis of several issues related to the reception of in-state broadcast television programming. Specifically, Section 304 required:

Not later than 18 months after the date of the enactment of this Act, the Federal Communications Commission shall submit to the appropriate Congressional committees a report containing an analysis of --

(1) the number of households in a State that receive the signals of local broadcast stations assigned to a community of license that is located in a different State;

(2) the extent to which consumers in each local market have access to in-state broadcast programming over the air or from a multichannel video programming distributor; and

(3) whether there are alternatives to the use of designated market areas, as defined in section 122 of title 17, United States Code, to define local markets that would provide more consumers with in-state broadcast programming.<sup>4</sup>

By these Reply Comments, the Association provides input on behalf of its members regarding the third issue, whether there are alternatives to the use of Designated Market Areas (“DMAs”) to define local markets that would result in more consumers receiving in-state broadcast programming. As detailed further below, the Association believes that the present use of DMAs defined by the Nielsen Company (“Nielsen”) remains the best and most appropriate method for determining the relevant television market in a particular geographic area and determining carriage of television stations by multichannel video programming distributors (“MVPDs”). Television

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<sup>4</sup> The Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, § 304 (2010).

markets are not constrained by state or county boundaries, just as metropolitan areas are not defined by state or city borders. The use of Nielsen DMAs continues to be the best approximation of the real-world marketplace and viewer habits, defining where viewers have a community of interest in their TV programming, and reflecting the area that television stations strive to serve with relevant local programming. As demonstrated by the anecdotes and examples provided below by Association members, as well as by earlier commenters in this proceeding, in-market television stations are best able to serve the needs of the DMA, including any counties or communities that may fall in an adjacent state.

## **II. DISCUSSION**

Congress, and by extension the Commission, has requested input on alternatives to the use of DMAs to define markets in such a way as to provide consumers with in-state television programming. As numerous commenters have stated, however, no viable alternative exists that would better serve the public interest than the use of Nielsen DMAs. Designated Market Areas as defined by Nielsen are engineered to define a cohesive geographic region and population that shares businesses, sports, weather, environmental concerns, and viewing habits, without strict adherence to municipal or state boundaries.<sup>5</sup> This is the very definition of a “market” and more closely tracks local interests than do the sometimes artificial borders of a state, which may be relevant for political purposes, but not economic, social, or personal choices of television viewers.

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<sup>5</sup> Furthermore, as several commenters have detailed, the process of defining television DMAs is dynamic, and Nielsen reviews and adjusts markets periodically to reflect changes in population and station service areas, as well as viewing and advertising patterns. *See, e.g.*, Comments of Lin Television Corporation at 3-5; Comments of the National Association of Broadcasters at 5-11. Similarly, the Commission also has the ability to adjust the market definition for a particular broadcast station in order to include or exclude communities from such station’s television market. 47 U. S.C. § 534(h)(1)(C). Thus, Nielsen DMAs have proven to be an effective and adaptable tool for defining markets.

As many commenters have pointed out, any change in the use of Nielsen DMAs would be highly disruptive and complicated, and any resulting gain in service or benefit to the public from in-state stations would be speculative at best.<sup>6</sup> The use of Nielsen DMAs is deeply intertwined with both the communications and copyright rules, making it difficult to change without significant disruption, and difficult to justify as being in the public interest. As the Commission's Public Notice acknowledges,<sup>7</sup> redefining the local market to replace DMAs with alternative geographic areas would be highly disruptive as it would affect viewers, the advertising market, the number of stations carried by MVPDs in the redefined local markets, and compliance with the Commission's broadcast television ownership rules, among other things. Thus, no public interest basis exists sufficient to justify the disruption of communications and copyright rules, or viewer and business expectations, that would result from changing the current use of DMAs.

Ultimately, the Association supports the assertion made by earlier commenters to this proceeding, including National Association of Broadcasters, the Local Television Broadcasters, Lin Television Corporation, and others, that the current Nielsen DMA market definitions are the best and most appropriate means for determining the relevant television market in a geographic area. Simply because a television station is located in the same state as a particular viewer does not mean that that station is best suited to serve the needs and interests of that viewer, or that an in-state station is capable of delivering the programming most relevant to that viewer. Moreover, the fact that a county is in a different state than the majority of a market, does not change the fact that the county is intrinsically intertwined with that market. In fact, many residents of a DMA that

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<sup>6</sup> See, e.g., Comments of the National Association of Broadcasters at 22-29; Comments of Local Television Broadcasters at 11-13; Comments of DIRECTV at 7-8; and Comments of National Cable & Telecommunications Association at 3, 6. As several commenters have noted, approximately half of the DMAs in the country straddle state lines, meaning that any change to the television market definition to account for state borders would have a potentially wide ranging impact.

<sup>7</sup> Public Notice at 5.

crosses a state boundary work in one state and commute across the border and live in the adjacent state. Just as Arlington and Alexandria, Virginia are central to the Washington, DC metropolitan area, and the Northern New Jersey counties of Union, Essex, and Hudson are part of the New York City metropolitan area, so too is Umatilla County, discussed in detail below, intrinsically intertwined with the Washington counties in the Yakima-Pasco-Richland-Kennewick DMA.

More importantly, as demonstrated below, the Association believes that stations located within a DMA are best able to serve the needs and interests of the communities within the market. Substituting or importing a signal from an in-state, but very distant, television station will not better serve viewers and advertisers, and is contradictory to one of the Commission's core values, enhancing localism. It is axiomatic that broadcast stations work to serve the market, regardless of what state in which residents are located. The fact that part of a market lies across a state boundary does not mean that the stations licensed to one state ignore the needs and interests of viewers in the adjacent state.

### Portland

Take for example the market of Portland, Oregon. The Portland DMA straddles the Washington and Oregon border, and includes five counties located in Washington state. These Washington counties are located just across the Columbia River from the city of Portland, are part of the Portland metropolitan area, and account for approximately 18% of the television households in the DMA.<sup>8</sup> While all but one (ten out of eleven) of the full power TV stations in the Portland DMA are licensed to communities in Oregon, it would be wrong to suggest that the Oregon stations fail to serve the needs and interests of Washingtonian viewers, just as it would be inconceivable that the market boundaries be arbitrarily redrawn along the Washington-Oregon

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<sup>8</sup> Broadcasting & Cable Yearbook 2010, B-205 (2010).

state border. Rather, the stations in the Portland market serve the needs of the market's residents, regardless of whether they are in Oregon or Washington.

### Yakima

While the Portland, Oregon market may be a more straightforward example, the Association has found the same to be true in other markets in the state that share counties and communities across state lines. The Yakima-Pasco-Richland-Kennewick, Washington DMA is composed of four counties in the state of Washington, and one county, Umatilla County, in Oregon. As a hyphenated market, the Yakima-Pasco-Richland-Kennewick DMA contains several small cities in the Southeastern portion of Washington, and into Oregon. Umatilla County, despite being over the border in Oregon, is demonstrably part of the same market area, sharing many of the same needs, interests, concerns, and businesses as the cities in the Washington portion of the DMA.

Umatilla is geographically far closer to the TV stations in the Washington market than it would be to any TV station in any other Oregon market. And given the rural nature of the county, the attention that would likely be paid to this distant county by any Oregon station currently in another DMA would be minimal. Thus, any disruption to the existing market areas, as defined by Nielsen, simply has no public interest justification.

In preparation for these comments, the Association contacted stations in the Yakima-Pasco-Richland-Kennewick market and gathered the following examples of how the stations serve Umatilla County, which they each view as an integral part of the market.

**KEPR-TV-** Over the Fourth Quarter of 2010, KEPR-TV, Pasco, Washington, averaged nearly eight news stories per week (better than one per day) from Umatilla County. Such stories include news and sports from the area, and are in addition to the daily weather coverage and forecasts that are routinely given for the cities of Hermiston and Pendleton, Oregon. The station has also devoted significant time recently to coverage and alerts related to flooding of the Umatilla River, and regularly provides information about school delays in Umatilla County

during its newscasts and crawls. The station's news personalities are often in Umatilla County to cover important local issues, including the building of new elementary schools in the district and plans to re-route a freeway exit in Pendleton, Oregon to decrease congestion. Prior to the last general election, one of the station's anchors moderated a city council forum in Hermiston, Oregon, discussing the candidates and issues facing the city and County.

**KNDU**- KNDU(DT), Richland, Washington, regularly covers stories in Umatilla County, including recent stories on closures on highway I-84, which runs through the county, a chemical spill in Milton-Freewater, Oregon, and sirens at the Army installation. The station also routinely covers local sports in the cities of Hermiston and Pendleton, Oregon, as well as including Oregon in the station's weather reports. In addition, stations in the market, including KNDU, regularly cover issues related to the Umatilla Chemical Depot, which is an important Army installation located in Umatilla County. The Depot has a great impact in the region and market, and first responders throughout the Yakima-Pasco-Richland-Kennewick market from both Washington and Oregon are part of an emergency plan for the region. Similarly, the Hanford Nuclear Reservation, located in Washington, is of great importance to viewers in Umatilla as well as in the Washington counties. These important facilities are an integral part of the market and relevant to the local stations and viewers regardless of the state in which they are located.

**KFFX-TV**- KFFX-TV, licensed to Pendleton, Oregon, is the only full power television station in Oregon licensed to the market. The licensee of KFFX-TV also operates KCYU-LD, Yakima, Washington, in the northern portion of the market. KFFX-TV notes that its viewers readily identify themselves as part of the Columbia River Basin, which runs through the Yakima-Pasco-Richland-Kennewick DMA and includes portions of both Washington and Oregon. KFFX-TV emphasizes that the Emergency Alert System maintained by the stations in the market is critical to the entire region because of both the Umatilla Chemical Depot and the Hanford Nuclear Reservation, and that the stations in the market are best positioned to monitor and maintain critical service to the community. In KFFX-TV's opinion, news imported from the Portland market would be of little interest to the viewers in Umatilla County, despite having originated in the same state. KFFX-TV notes further the potential problems, including delays and technical failures, attendant to the importation of signals from such a great distance away.

The stations in Yakima-Pasco-Richland-Kennewick also note the importance of Umatilla County to the market as a whole, and the fact that local advertisers depend on reaching viewers in that county. In fact, KEPR-TV estimates that Umatilla County represents approximately 25% of the market. Given the business, cultural, emergency planning, and regional ties throughout the

Yakima-Pasco-Richland-Kennewick market, disrupting existing marketplace relationships in Umatilla County simply because it is located in Oregon does not serve the public interest.

The closest Oregon television stations, aside from KFFX-TV which is located in the market, are located approximately 150 to 175 miles away in either the Portland, Oregon market or the Bend, Oregon market. Stations in those distant markets would have no interest or ability to respond to the needs of Umatilla County located such a long distance away. Umatilla County shares important regional and public safety issues with the adjoining counties in Washington that it does not share with the distant markets of Portland or Bend, and those distant stations would be hard pressed to cover local events appropriately in the case of an emergency. Further, local businesses and institutions would have difficulty reaching local viewers in Umatilla County, as advertisers would likely find it difficult to pay the advertising rates commanded by stations in the Portland market, which is the 22nd largest DMA in the country, in contrast to the Yakima-Pasco-Richland-Kennewick DMA, which is ranked 126th. So too, local candidates for public office would be forced to buy time on a distant, larger market station to reach voters in the county.

Thus, Umatilla County is an integral part of the Yakima-Pasco-Richland-Kennewick DMA, and is well-served by television stations in that market. The current market as defined by Nielsen is an accurate reflection of the real-world market, as the region shares a number of important commonalities, including important installations on both sides of the state border. Any change in the market definition would potentially be detrimental to viewers and advertisers in both Umatilla County and in the counties in Washington State.

### Spokane

The market of Spokane, Washington, presents an interesting example of a large television market more common in the Western states. The market contains counties from four different states. Despite the geographic size and the inclusion of counties from Washington, Idaho, Oregon,



and Montana, stations in the market do not program simply to viewers in Washington state and the city of Spokane, but rather seek to serve the entire market. Below are some examples from stations in the Spokane DMA demonstrating the service to, and integration with, the Northern Idaho counties in the market.

**KXLY-TV**- KXLY-TV, licensed to Spokane, Washington, views the Idaho counties as so essential to the market that it maintains an office in downtown Coeur d'Alene, Idaho, staffed by full time account representatives to serve the businesses in Northern Idaho. The staff located in Coeur d'Alene represents the station at events and in communities in Idaho in order to better serve those communities.

KXLY-TV regularly provides news coverage of events in, and programming responsive to, North Idaho. The station provides news, weather warnings and public safety information to North Idaho viewers, including numerous reports during the current winter season. News crews from the station travelled throughout the panhandle of Idaho covering road and weather conditions. The station provides complete coverage of elections that impact North Idaho voters, including special elections. The station was active in the 2010 election and provided free airtime in its newscasts for each candidate in Idaho running for major statewide or federal office. Further, the station regularly covers quality of life issues, community events, and sports taking place in, and of interest to, North Idaho. The station is a longtime partner with many community groups and organizations in Idaho as well as Washington.

**KREM(DT)**- KREM(DT), Spokane, Washington, offers severe weather information and specific forecasts for all communities in North Idaho. The station has a dedicated bureau reporter providing live news and weather stories from North Idaho five days a week. Heavy snow and flooding in particular are seasonal breaking news stories in Northern Idaho, and the station covers the events with a reporter on the scene with live information. The station also covers local Idaho sports, offering high school and college sports highlights and coverage for all of North Idaho.

Beyond coverage of news, weather, and sports, the station is also active in the local Idaho community. The station's on-air talent makes appearances at local Idaho high schools, and the station's creative services department produces a North Idaho Distinguished Student Award that recognizes a high achieving high school senior from North Idaho every Thursday during the school year in the 6pm newscast as nominated by a North Idaho teacher. The station provides extensive on-air, online and social media coverage of the largest events that happen in North Idaho during the year including, but not limited to: Ironman Coeur d'Alene, Coeur d'Alene Christmas Tree Lighting and Parade, the Car d'Alene car show in Coeur d'Alene, the Post Falls River Rod Run, and the 4th of July Fireworks in Coeur d'Alene.

While the Spokane market is geographically quite large and includes all of Northern Idaho, the stations in the market strive to serve the needs of viewers, businesses, and communities throughout the market, regardless of state. Redrawing market boundaries along state lines, or otherwise importing signals from distant Idaho stations located two to three hundred miles downstate would not result in better service or greater localism for the residents in Northern Idaho.

### **III. CONCLUSION**

As demonstrated above, the Association believes that the current use of Designated Market Area defined by Nielsen continues to be the most accurate approximation of a television market, and the most appropriate standard to use for purposes of the Commission's Rules. Local, in-market stations, regardless of whether they are licensed to one state or another, are best able to provide the local news, sports, public affairs, entertainment programming, and emergency information relevant to viewers in the market. Further, no public interest basis exists sufficient to justify the disruption of communications and copyright rules, or viewer and business expectations, that would result from changing the current use of DMAs.

Respectfully submitted,

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